

19-12-101. Title.

This chapter is known as the "Pollution Control Act."

Enacted by Chapter 24, 2014 General Session

19-12-102. Definitions.

As used in this chapter:

- (1) "Air contaminant" is as defined in Section 19-2-102.
- (2) "Air contaminant source" is as defined in Section 19-2-102.
- (3) "Air pollution" is as defined in Section 19-2-102.
- (4) "Director" means:
 - (a) for purposes of an application or certification under this chapter related to air pollution, the director of the Division of Air Quality; or
 - (b) for purposes of an application or certification under this chapter related to water pollution, the director of the Division of Water Quality.
- (5) (a) "Freestanding pollution control property" means tangible personal property located in the state, regardless of whether a purchaser purchases the tangible personal property voluntarily or to comply with a requirement of a governmental entity, if:
 - (i) the primary purpose of the tangible personal property is the prevention, control, or reduction of air or water pollution by:
 - (A) the disposal or elimination of, or redesign to eliminate, waste, and the use of treatment works for industrial waste; or
 - (B) the disposal, elimination, or reduction of, or redesign to eliminate or reduce, air contaminants, air pollution, or air contamination sources, and the use of one or more air cleaning devices; and
 - (ii) the tangible personal property is not used at, in the construction of, or incorporated into a pollution control facility.
- (b) "Freestanding pollution control property" does not include:
 - (i) a consumable:
 - (A) chemical that is not reusable;
 - (B) cleaning material that is not reusable; or
 - (C) supply that is not reusable;
 - (ii) the following used for human waste:
 - (A) a septic tank; or
 - (B) other property;
 - (iii) property installed, constructed, or used for the moving of sewage to a collection facility of a public or quasi-public sewerage system;
 - (iv) the following used for the comfort of personnel:
 - (A) an air conditioner;
 - (B) a fan; or
 - (C) an item similar to Subsection (5)(b)(iv)(A) or (B); or
 - (v) office equipment or an office supply if the primary purpose of the office equipment or office supply is not the prevention, control, or reduction of air or water pollution by:
 - (A) the disposal or elimination of, or redesign to eliminate, waste, and the use of

treatment works for industrial waste; or

(B) the disposal, elimination, or reduction of, or redesign to eliminate or reduce, air contaminants, air pollution, or air contamination sources, and the use of one or more air cleaning devices.

(6) (a) "Pollution control facility" means real property in the state, regardless of whether a purchaser purchases the real property voluntarily or to comply with a requirement of a governmental entity, if the primary purpose of the real property is the prevention, control, or reduction of air pollution or water pollution by:

(i) the disposal or elimination of, or redesign to eliminate:

(A) waste; and

(B) the use of treatment works for industrial waste; or

(ii) (A) the disposal, elimination, or reduction of, or redesign to eliminate or reduce, air contaminants, air pollution, or air contamination sources; and

(B) the use of one or more air cleaning devices.

(b) "Pollution control facility" includes:

(i) an addition to real property described in Subsection (6)(a);

(ii) the reconstruction of real property described in Subsection (6)(a); or

(iii) an improvement to real property described in Subsection (6)(a).

(c) "Pollution control facility" does not include:

(i) a consumable:

(A) chemical that is not reusable;

(B) cleaning material that is not reusable; or

(C) supply that is not reusable;

(ii) the following used for human waste:

(A) a septic tank; or

(B) another facility;

(iii) property installed, constructed, or used for the moving of sewage to a collection facility of a public or quasi-public sewerage system;

(iv) the following used for the comfort of personnel:

(A) an air conditioner;

(B) a fan; or

(C) an item similar to Subsection (6)(c)(iv)(A) or (B); or

(v) office equipment or an office supply if the primary purpose of the office equipment or office supply is not the prevention, control, or reduction of air or water pollution by:

(A) the disposal or elimination of, or redesign to eliminate, waste, and the use of treatment works for industrial waste; or

(B) the disposal, elimination, or reduction of, or redesign to eliminate, or reduce, air contaminants, air pollution, or air contamination sources, and the use of one or more air cleaning devices.

(7) "Treatment works" is as defined in Section 19-5-102.

(8) "Waste" is as defined in Section 19-5-102.

(9) "Water pollution" has the same meaning as "pollution" under Section 19-5-102.

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19-12-201. Sales and use tax exemption for certain purchases or leases related to pollution control.

(1) Except as provided in Subsection (2), a purchase or lease of the following is exempt from a tax imposed under Title 59, Chapter 12, Sales and Use Tax Act:

- (a) freestanding pollution control property;
- (b) tangible personal property if the tangible personal property is:
 - (i) incorporated into freestanding pollution control property; or
 - (ii) used at, used in the construction of, or incorporated into a pollution control facility;
- (c) a part, if the part is used in the repair or replacement of property described in Subsection (1)(a) or (b);
- (d) a product transferred electronically, if the property transferred electronically is:

- (i) incorporated into freestanding pollution control property; or
 - (ii) used at, used in the construction of, or incorporated into a pollution control facility; or
- (e) a service, if the service is performed on:
 - (i) freestanding pollution control property;
 - (ii) a pollution control facility; or
 - (iii) property described in Subsection (1)(b), a part described in Subsection (1)(c), or a product described in Subsection (1)(d).

(2) A purchase or lease of the following is not exempt under this section:

- (a) a consumable chemical that is not reusable;
- (b) a consumable cleaning material that is not reusable; or
- (c) a consumable supply that is not reusable.

(3) A purchase or lease of office equipment or an office supply is not exempt under this section if the primary purpose of the office equipment or office supply is not the prevention, control, or reduction of air or water pollution by:

- (a) the disposal or elimination of, or redesign to eliminate, waste, and the use of treatment works for industrial waste; or
- (b) the disposal, elimination, or reduction of, or redesign to eliminate or reduce, air contaminants, air pollution, or air contamination sources, and the use of one or more air cleaning devices.

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19-12-202. Certification required before claiming a sales and use tax exemption.

(1) Before a person may claim a sales and use tax exemption under Section 19-12-201, the person shall obtain certification issued in accordance with Section 19-12-303.

(2) For purposes of Subsection (1), if a certification relates to air pollution:

- (a) a person shall submit an application under Section 19-12-301 or 19-12-302 to the director of the Division of Air Quality; and
- (b) the director of the Division of Air Quality shall perform the duties described in:

- (i) Section 19-12-303 related to certification; and
- (ii) Section 19-12-304 related to revocation of certification.
- (3) For purposes of Subsection (1), if a certification relates to water pollution:
 - (a) a person shall submit an application under Section 19-12-301 or 19-12-302 to the director of the Division of Water Quality; and
 - (b) the director of the Division of Water Quality shall perform the duties described in:
 - (i) Section 19-12-303 related to certification; and
 - (ii) Section 19-12-304 related to revocation of certification.

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19-12-203. Refunds -- Interest.

(1) A person who pays a tax under Title 59, Chapter 12, Sales and Use Tax Act, on a purchase or lease that would otherwise be exempt under Section 19-12-201, except that the director has not issued a certification under Section 19-12-303, may obtain a refund of the tax if:

- (a) the director subsequently issues a certification under Section 19-12-303; and
- (b) the person files a claim for the refund with the State Tax Commission on or before the earlier of:

- (i) three years after the date the director issues the certification under Section 19-12-303; or

- (ii) six years after the date the person pays the tax under Title 59, Chapter 12, Sales and Use Tax Act.

(2) A person who pays a tax under Title 59, Chapter 12, Sales and Use Tax Act, on a purchase or lease that is exempt under Section 19-12-201, may obtain a refund of the tax if the person files a claim for the refund with the State Tax Commission within three years after the date the person pays the tax under Title 59, Chapter 12, Sales and Use Tax Act.

(3) (a) If a person files a claim for a refund of taxes under Subsection (1) within 180 days after the date the director issues a certification under Section 19-12-303, interest shall be added to the amount of the refund the State Tax Commission grants:

- (i) at the interest rate prescribed in Section 59-1-402; and
 - (ii) beginning on the date the person pays the tax under Title 59, Chapter 12, Sales and Use Tax Act, for which the person is claiming the refund.

(b) If a person files a claim for a refund of taxes under Subsection (1) more than 180 days after the date the director issues a certification under Section 19-12-303, interest shall be added to the amount of the refund the State Tax Commission grants:

- (i) at the interest rate prescribed in Section 59-1-402; and
 - (ii) beginning 30 days after the date the person files the claim for a refund.

(4) If a person files a claim for a refund of taxes under Subsection (2), interest shall be added to the amount of the refund the State Tax Commission grants:

- (a) at the interest rate prescribed in Section 59-1-402; and
 - (b) beginning 30 days after the date the person files the claim for the refund.

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19-12-301. Application for certification of a pollution control facility.

(1) The following may apply to the director for certification of a pollution control facility erected, constructed, installed, or acquired, or to be erected, constructed, installed, or acquired:

(a) an owner, including a contract purchaser, of a trade or business that includes a pollution control facility;

(b) a person who, as a lessee or in accordance with an agreement, conducts a trade or business that includes a pollution control facility; or

(c) a person who operates a pollution control facility in accordance with an agreement with a person described in Subsection (1)(a) or (b).

(2) A person may file an application under this section after:

(a) the person enters into a firm construction contract with another person; or

(b) construction has commenced.

(3) An application for certification under this section shall:

(a) be in a form the director prescribes; and

(b) contain:

(i) a description of the pollution control facility;

(ii) for a purchase or lease of property, a part, a product, or a service for which a person seeks to claim a sales and use tax exemption under Section 19-12-201, a description of the property, part, product, or service;

(iii) the existing or proposed operation procedure for the pollution control facility; and

(iv) a statement of the purpose served or to be served by the pollution control facility.

(4) The director may require an application to contain additional information the director finds necessary to determine whether to grant certification under Section 19-12-303.

(5) This section does not apply to the certification of freestanding pollution control property.

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19-12-302. Application for certification of freestanding pollution control property.

(1) The following may apply to the director for certification of freestanding pollution control property:

(a) an owner, including a contract purchaser, of the freestanding pollution control property;

(b) a person who leases the freestanding pollution control property; or

(c) a person who operates the freestanding pollution control property under an agreement with a person described in Subsection (1)(a) or (b).

(2) An application for certification under this section shall:

(a) be in a form the director prescribes; and

(b) contain:

(i) a description of the freestanding pollution control property;

(ii) for a purchase or lease of property, a part, a product, or a service for which a

person seeks to claim a sales and use tax exemption under Section 19-12-201, a description of the property, part, product, or service;

(iii) the existing or proposed operational procedure for the freestanding pollution control property; and

(iv) a statement of the purpose served or to be served by the freestanding pollution control property.

(3) The director may require an application to contain additional information the director finds necessary to determine whether to grant certification under Section 19-12-303.

(4) This section does not apply to the certification of a pollution control facility.

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19-12-303. Certification of pollution control facility or freestanding pollution control property.

(1) The director shall issue a written certification to a person no later than 120 days after the date the person files an application under Section 19-12-301 or 19-12-302 if the director determines that:

(a) for a pollution control facility:

(i) the application meets the requirements of Subsection 19-12-301(3);

(ii) the facility that is the subject of the application is a pollution control facility;

(iii) the person who files the application is a person described in Subsection 19-12-301(1); and

(iv) the purchases or leases for which the person seeks to claim a sales and use tax exemption are exempt under Section 19-12-201; or

(b) for freestanding pollution control property:

(i) the application meets the requirements of Subsection 19-12-302(2);

(ii) the property that is the subject of the application is freestanding pollution control property;

(iii) the person who files the application is a person described in Subsection 19-12-302(1); and

(iv) the purchases or leases for which the person seeks to claim a sales and use tax exemption are exempt under Section 19-12-201.

(2) If the director denies certification under this section to a person who files an application, the director shall provide a written statement of the reason for the denial to the person no later than 120 days after the date the person files the application.

(3) The director may not require the certification of:

(a) a replacement of freestanding pollution control property; or

(b) property, a part, a product, or a service described in Subsections 19-12-201(1)(b) through (e) used or performed in a repair or replacement related to:

(i) a pollution control facility; or

(ii) freestanding pollution control property.

(4) The director may issue one certification under this section of two or more:

(a) pollution control facilities that constitute an operational unit; or

(b) freestanding pollution control properties that constitute an operational unit.

(5) If the director does not issue or deny a certification under this section within

120 days after the date a person files an application, the director shall issue a certification to the person at the person's request.

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19-12-304. Revocation of certification.

(1) The director may revoke a certification issued under Section 19-12-303 if the director determines that:

- (a) the certification was obtained by fraud or gross misrepresentation; or
- (b) (i) for a pollution control facility, a requirement of Subsection 19-12-303(1)(a) is not met; or
- (ii) for freestanding pollution control property, a requirement of Subsection 19-12-303(1)(b) is not met.

(2) A shutdown of a pollution control facility or freestanding pollution control property due to force majeure, including obsolescence, is not cause to revoke the certification of the pollution control facility or freestanding pollution control property.

(3) The director shall provide notice of the director's determination to revoke a certification by issuing a notice of agency action.

(4) The holder of a certification may obtain judicial review of the decision of the director to revoke the certification.

(5) A revocation under this section is final and conclusive unless the holder of the certification obtains judicial review in accordance with Subsection (4).

(6) If a revocation is affirmed on appeal, the revocation is final on the date the holder receives the notice described in Subsection (3).

(7) If a revocation becomes final under this section, the director shall notify the State Tax Commission of the revocation.

(8) If the director revokes a certification under this section:

- (a) the prior sales and use tax exemptions the holder of the certification claimed under Section 19-12-201 are forfeited; and
- (b) the State Tax Commission shall collect taxes not paid by the holder of the certification:
 - (i) as a result of claiming the sales and use tax exemptions under Subsection (8)(a); and
 - (ii) to the extent permitted by Title 59, Chapter 1, Part 14, Assessment, Collections, and Refunds Act.

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19-12-305. Rulemaking authority.

(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for purposes of a certification related to air pollution, the Air Quality Board may make rules establishing procedures for:

- (a) processing and evaluating an application for certification; and
- (b) the issuance and revocation of a certification.

(2) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for purposes of a certification related to water pollution, the Water Quality Board

may make rules establishing procedures for:

- (a) processing and evaluating an application for certification; and
- (b) the issuance or revocation of a certification.

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